BILL NO. 113

Government Bill

1st Session, 60th General Assembly
Nova Scotia
55 Elizabeth II, 2006

An Act to Amend Chapter 1 of the Acts of 1994-95, the Environment Act

CHAPTER 30
ACTS OF 2006

AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
NOVEMBER 23, 2006

The Honourable Mark Parent
Minister of Environment and Labour

Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly

An Act to Amend Chapter 1 of the Acts of 1994-95, the Environment Act

Be it enacted by the Governor and Assembly as follows:

1 Section 2 of Chapter 1 of the Acts of 1994-95, the *Environment Act*, is amended by

(a) adding "that is not *de minimis*"** immediately after "environment" in the third line of clause (c); and**

(b) adding ", environmental management"** immediately after "education" in the second line of clause (e).**

2 Section 3 of Chapter 1, as amended by Chapter 6 of the Acts of 2001, is further amended by

(a) relettering clause (a) as (aa) and adding immediately preceding clause (aa) the following clause:

(a) "Act" includes, unless the context otherwise requires, the regulations made pursuant to this Act;

(b) striking out clause (l) and substituting the following clause:

(l) "contaminated site" means

(i) unless otherwise defined by regulation, a site with concentrations of a contaminant or contaminants that exceed standards prescribed or adopted by the Minister that has caused, is causing or may cause an adverse effect, or

(ii) a site designated as a contaminated site by the Minister pursuant to Section 87;

(c) striking out clause (o) and substituting the following clause:

(o) "Department" means the Department of Environment and Labour;

(d) adding immediately after clause (ae) the following clause:

(aea) "litter" means any material left or abandoned in a place other than a receptacle or place intended or approved for receiving such material;

(e) striking out clause (ag) and substituting the following clause:

(ag) "Minister" means the Minister of Environment and Labour;

(f) striking out clause (as) and substituting the following clause:

(as) "Round Table" means an advisory committee established to advise the Department on issues referred to it by the Minister related to environmental sustainability;

(g) striking out clause (az) and substituting the following clause:

(az) "undertaking" means an enterprise, activity, project, structure, work or proposal that, in the opinion of the Minister, causes or may cause an adverse effect or an environmental effect, and may include, in the opinion of the Minister, a policy, plan or program or a modification, extension, abandonment, demolition or rehabilitation, as the case may be, of an undertaking;

and

(h) striking out the period at the end of clause (bf) and substituting a semicolon and adding the following clause:

(bg) "wetland" means land commonly referred to as a marsh, swamp, fen or bog that either periodically or permanently has a water table at, near or above the land's surface or that is saturated with water, and sustains aquatic processes as indicated by the presence of poorly drained soils, hydrophytic vegetation and biological activities adapted to wet conditions.

3 Chapter 1 is further amended by adding immediately after Section 3 the following Section:

3A (1) A regulation under this Act may adopt or incorporate in whole or in part or with modifications documents that set out standards, policies, codes, guidelines or other rules relating to any matter in respect of which a regulation may be made under this Act.

(2) Where a standard, policy, code, guideline or other rule is adopted or incorporated by regulation under this Act, the Minister shall make it publicly available.

4 Clauses 9(a) to (c) of Chapter 1 are repealed and the following clauses substituted:

(a) appoint any person, establish advisory committees and retain experts to report to the Minister with respect to

(i) the content and administration of this Act,

(ii) any policies, programs, standards, guidelines, objectives, codes of practice, directives, approval processes or other matters under the administration of the Minister,

(iii) the review of any refusal to issue approvals or certificates of qualification under Part V or to review suspensions or cancellations of approvals under Part V, or

(iv) issues related to sustainable development;

(b) specify the functions that any person, the committees and the experts appointed or retained pursuant to clause (a) are to perform, including the seeking of input from the public and the manner and time period in which those functions are to be performed;

(c) provide for the remuneration of and payment of expenses to experts, witnesses, members of committees and any person appointed pursuant to clause (a);

5 Chapter 1 is further amended by adding immediately after Section 9 the following Section:

9A (1) The Minister shall establish a Round Table to give advice to the Department with respect to issues referred by the Minister related to environmental sustainability.

(2) The Minister shall appoint to the Round Table persons who have particular knowledge or experience relating to environmental sustainability.

(3) Persons appointed to the Round Table shall be paid expenses incurred by them in the course of carrying out their duties for the Round Table, plus such remuneration as is determined by the Minister.

6 Subsection 10(2) of Chapter 1 is amended by striking out "and, in particular, Section 21 of that Act" immediately after "*Act*" in the third line.

7 Sections 11 to 13 of Chapter 1 are repealed.

8 Subsection 17(3) of Chapter 1 is amended by striking out "(b)" in the second line and substituting "(i)".

9 Clause 25(1)(b) of Chapter 1 is repealed and the following clause substituted:

(b) respecting the manner in which reports of persons, advisory committees and experts appointed or retained pursuant to clause 9(a) are made public;

10 (1) Subsection 28(1) of Chapter 1 is amended by adding ", or otherwise promoting,**" immediately after "for" the second time it appears in the second line.**

(2) Subsection 28(3) of Chapter 1 is amended by striking out ", on the recommendation of the Round Table," in the second and third lines.

(3) Subsection 28(4) of Chapter 1 is amended by striking out "Round Table" and substituting "Minister**".**

(4) Section 28 of Chapter 1 is further amended by adding immediately after subsection (5) the following subsections:

(6) The Governor in Council may make regulations

(a) respecting the governance and distribution of the Trust, including the appointment of external directors or trustees;

(b) directing certain monies from fines be designated to the Trust;

(c) permitting settlements made relative to prosecutions under this Act to be directed to the Trust.

(7) The exercise by the Governor in Council of the authority contained in subsection (6) is regulations within the meaning of the *Regulations Act*.

11 Clauses 29(2)(a) and (b) are repealed and the following clauses substituted:

(a) promote youth involvement in environmental stewardship and commitment to the conservation and enhancement of the environment;

(b) provide youth with opportunities to participate in environmental projects, thereby providing Corps members with leadership skills and training and building community capacity in environmental management;

12 Section 31 of Chapter 1 is amended by

(a) adding "(1)" immediately after the Section number;

(b) striking out "The" in the first line and substituting "Subject to subsection (2), the**"; and**

(c) adding the following subsection:

(2) This Part does not apply to class environmental assessments as prescribed in the regulations.

13 Section 34 of Chapter 1 is amended by adding immediately after subsection (3) the following subsections:

(4) A proponent may withdraw the registration of an undertaking.

(5) At any stage during the environmental assessment process, where the Minister believes the proponent is not complying with this Act or the regulations, the Minister may suspend the environmental assessment process until such time as the Minister is satisfied the proponent is in compliance.

14 Chapter 1 is further amended by adding immediately after Section 41 the following Sections:

41A (1) The Minister may only amend a term or condition of an environmental assessment approval

(a) upon the request of the approval holder, if the Minister considers it appropriate to do so;

(b) if an adverse effect or an unacceptable environmental effect has occurred or may occur;

(c) if the term or condition relates to

(i) a monitoring or reporting requirement, or

(ii) a standard; or

(d) to correct a typographical error.

(2) The Minister shall give notice in writing, together with reasons, to the approval holder at least thirty days in advance of making an amendment pursuant to subsection (1).

41B (1) No person shall transfer, sell, lease, assign or otherwise dispose of an environmental assessment approval under this Part without the written consent of the Minister.

(2) The Minister may impose any terms or conditions that the Minister considers appropriate in respect of the transfer, assignment or other disposition of an environmental assessment approval.

(3) A consent pursuant to subsection (1) shall be given within sixty days of the receipt of an application or request, unless the Minister notifies the applicant otherwise, in writing, within ten days of receipt of the application or request.

15 Subsection 47(3) of Chapter 1 is amended by striking out "consistent with any regulations under this Act" in the third and fourth lines.

16 Subsection 49(1) of Chapter 1 is amended by

(a) striking out "a" in the third line of clause (b) and substituting "an environmental assessment**";**

(b) striking out clause (e) and substituting the following clause:

(e) respecting public consultation during the environmental assessment process;

and

(c) adding immediately after clause (r) the following clauses:

(ra) respecting the designation of undertakings for the purpose of class environmental assessments;

(rb) respecting the amendment of environmental assessment registrations and the terms and conditions of such amendments;

(rc) respecting the environmental assessment process;

17 (1) Subsection 58(2) of Chapter 1 is repealed and the following subsections substituted:

(2) It is a condition of every approval that the Minister may only amend a term or condition of, add a term or condition to or delete a term or condition from an approval

(a) if an adverse effect has occurred or may occur;

(b) for the purpose of addressing matters related to a temporary suspension of the activity by the approval holder;

(c) if the term or condition relates to

(i) a monitoring or reporting requirement, or

(ii) a standard; or

(d) to correct a typographical error.

(2A) The Minister may cancel or suspend an approval

(a) for breach or default of the approval;

(b) if new or corrected information respecting an adverse effect is brought to the attention of the Minister; or

(c) if an approval is no longer required under this Act.

(2) Subsection 58(3) of Chapter 1 is amended by striking out "clause (2)(a)" in the last line and substituting "subsection (2)".

(3) Subsection 58(4) of Chapter 1 is amended by striking out "clause (2)(b)" in the second line and substituting "subsection (2A)".

18 Subsection 59(3) of Chapter 1 is repealed and the following subsection substituted:

(3) The Minister may impose any terms or conditions that the Minister considers appropriate in respect of the transfer, assignment or other disposition of an approval.

19 Subsection 61(2) of Chapter 1 is amended by striking out "a significant" in the third line and substituting "an".

20 Clause 65(1)(b) of Chapter 1 is amended by striking out "that it is" in the second line and substituting "it".

21 Chapter 1 is further amended by adding immediately after Section 65 the following Section:

65A (1) The Minister may issue a temporary approval to the owner of a designated activity who is operating without an approval as required by this Act or the regulations.

(2) A temporary approval issued pursuant to subsection (1) shall contain the terms and conditions and the dates for compliance that must be followed by the owner to whom the temporary approval was issued.

(3) Where the owner to whom the temporary approval was issued does not fully comply with all the terms or conditions or time requirements of the temporary approval, the temporary approval is void.

(4) The Governor in Council may make regulations

(a) respecting temporary approvals;

(b) defining any word or expression used but not defined in this Section;

(c) the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Section.

22 Subsection 66(1) of Chapter 1 is amended by

(a) adding "respecting procedures related to the issuance of an approval or a certificate of qualification, including" **immediately before "prescribing" in the first line of clause (b); and**

(b) adding immediately after clause (e) the following clause:

(ea) respecting the establishment and administration of any board governing the oversight of persons with certificates of qualification;

23 (1) Subsection 67(1) of Chapter 1 is amended by striking out "a significant" in the fourth line and substituting "an".

(2) Subsection 67(2) of Chapter 1 is amended by striking out "a significant" in the fourth line and substituting "an".

24 Section 73 of Chapter 1 is amended by adding immediately after clause (b) the following clause:

(ba) establish procedures respecting the conducting of sampling, analysis, tests, measurements or monitoring of substances;

25 Subsection 74(1) of Chapter 1 is amended by

(a) striking out "spill" in the first line of clause (a) and substituting "release"; **and**

(b) striking out "the levels of training for responding to environmental emergencies" in the second and third lines of clause (d) and substituting "acceptable qualifications for emergency responders".

26 Clause 90(c) of Chapter 1 is repealed and the following clause substituted:

(c) adopt or establish standards, policies, guidelines, procedures or protocols, including risk based assessment and management models and tools, for the assessment, rehabilitation or management of contaminated sites;

27 Subsection 91(1) of Chapter 1 is amended by

(a) striking out clause (a) and substituting the following clause:

(a) respecting assessment and rehabilitation criteria used for the purpose of defining, determining or designating contaminated sites or for the rehabilitation and clean-up of such sites;

(b) striking out "responsible persons" in the second line of clause (b) and substituting "persons responsible"; **and**

(c) adding immediately after clause (d) the following clauses:

(da) establishing standards and procedures respecting the conducting of sampling, analyses, tests, measurements or monitoring of substances at a contaminated site;

(db) respecting the identification and notification of the discovery of contaminated sites;

(dc) respecting site assessment and the development of remedial action plans involving contaminated sites;

(dd) respecting voluntary remediation agreements made with the Department involving contaminated sites;

(de) respecting the use and application of generic and risk based remedial criteria, including the use of scientific models to predict human health or ecological effects from contaminants;

(df) respecting the preparation and content of environmental site assessment reports, risk assessment reports, site closure reports, monitoring reports and any other type of environmental report required for a contaminated site;

(dg) respecting the requirements for insurance and qualifications of site professionals who perform work, oversee work or who take responsibility for quality and accuracy of the work to rehabilitate contaminated sites, on behalf of the person responsible for the contaminated site;

(dh) respecting the regulatory liability of persons responsible for the contaminated site following the completion of remediation and site closure, or for the transfer of regulatory liability between third parties;

(di) respecting the filing and transfer of records of site condition and certificates of property use, and with respect to the filing of environmental notices on property title respecting records of site condition and certificates of property use;

28 (1) Subsection 93(1) of Chapter 1 is repealed and the following subsections substituted:

(1) The Province shall maintain a goal of fifty per cent solid-waste diversion.

(1A) There is hereby established a target for waste disposal of 300 kilograms per person per year by the year 2015.

(2) Section 93 of Chapter 1 is further amended by adding immediately after subsection (5) the following subsections:

(6) The Governor in Council may make regulations defining any word or expression used but not defined in this Section.

(7) The exercise by the Governor in Council of the authority contained in subsection (6) is regulations within the meaning of the *Regulations Act*.

29 Clause 95(e) of Chapter 1 is amended by adding "and product stewardship" **immediately after "stewardship".**

30 Clause 99(1)(b) of Chapter 1 is amended by adding "and compostable" **immediately after "recyclable" in the third line.**

31 Subsection 101(1) of Chapter 1 is amended by

(a) adding ", compostability" immediately after "composition" in the second and third lines of clause (a);

(b) adding ", compostability" immediately after "degradability" in the fourth line of clause (a); and

(c) adding ", composting" immediately after "reduction" in the second line of clause (c).

32 Subsection 102(1) of Chapter 1 is amended by

(a) striking out "handled and recycled" in the last line of subclause (a)(iv) and substituting "managed"; and

(b) striking out clause (h) and substituting the following clauses:

(h) respecting composting;

(ha) respecting the establishment and administration of the Resource Recovery Fund Board;

33 Section 104 of Chapter 1 is amended by

(a) striking out clause (a) and substituting the following clause:

(a) promote sustainable management of water resources;

(b) striking out "ensure" in the first line of clause (d) and substituting "promote"; and

(c) striking out "ensure" in the first line of clause (e) and substituting "promote".

34 Subsection 105(3) of Chapter 1 is amended by

(a) striking out 'To assist in the development of a water-resource management strategy, the" in the first and second lines and substituting "The";

(b) adding "and wetlands" immediately after "watercourses" in the second line of clause (a); and

(c) striking out clause (o).

35 Section 106 of Chapter 1, as amended by Chapter 6 of the Acts of 2001, is further amended by adding immediately after subsection (5) the following subsections:

(5A) Any area surrounding a source of public water supply defined and prescribed pursuant to Section 16 of Chapter 42 of the Acts of 1963, *An Act to Amend the Water Act*, is deemed to be a protected water area designated pursuant to the *Water Act* and remains so designated.

(5B) Any designation of a protected water area and any regulations regulating an activity in a designated protected water area that is referenced in subsection (5A)

or were in effect on April 1, 1977, are deemed to have been filed pursuant to subsection 24(1) of the *Regulations Act* before April 1, 1978.

36 Subsection 110(1) of Chapter 1 is amended by

(a) striking out clause (c) and substituting the following clause:

(c) respecting the construction, operation, classification and maintenance of water-treatment and water-distribution facilities and sewage-treatment and sewage-collection facilities and the operators of such facilities;

and

(b) adding immediately after clause (q) the following clauses:

(qa) providing for the protection of human health and the prevention of drinking-water health hazards through the control and regulation of drinking-water supplies, drinking-water testing and reporting;

(qb) respecting water distributed by water haulers for consumptive purposes;

(qc) respecting vehicles and containers used by water haulers;

(qd) respecting the qualifications of water haulers;

(qe) respecting the requirements for the selection, design, construction, installation, covering, operation, maintenance and repair of on-site sewage disposal systems;

(qf) respecting lot specifications and clearance distances for the construction and installation of on-site sewage disposal systems;

(qg) respecting the requirements for the construction and installation of innovative sewage disposal systems;

(qh) respecting the qualifications for qualified persons, installers and septic-tank cleaners for on-site sewage disposal systems;

(qi) respecting vehicles and containers used by septic-tank cleaners;

37 Clause 111(1)(b) of Chapter 1 is amended by striking out "performances" in the first line and substituting "performance**".**

38 Section 118 of Chapter 1 is amended by adding ", or any person the inspector reasonably believes is related to or associated with any activity at the place,**" immediately after "place" in the first line.**

39 (1) Subsection 119(1) of Chapter 1 is amended by

(a) adding ", certificate, temporary approval, variance or order**" immediately after "approval" in the second line of clause (a);**

(b) amends clause (a) by striking out the semicolon at the end of subclause (iii) and substituting a comma and adding the following subclause:

(iv) compliance with this Act and the regulations;

(c) adding ", temporary approval" **immediately after "approval" in the second line of subclause (d)(i); and**

(d) adding ", temporary approval" **immediately after "approval" in the fourth line of clause (e).**

(2) Section 119 of Chapter 1 is further amended by adding immediately after subsection (1) the following subsection:

(1A) An inspector and a person lawfully accompanying an inspector may, while carrying out duties under this Act, enter on or pass over any land or water, whether enclosed or not, without being liable for trespass and without the owner of the property having the right to object.

40 Subsection 128(2) of Chapter 1 is **amended by striking out "seventy-two hours" in the third line and substituting** "three business days"**.**

41 Subsection 129(1) of Chapter 1 is amended by adding ", an administrator or an inspector" **immediately after "Minister" in the second and in the fourth lines.**

42 (1) Subsection 137(1) of Chapter 1 is amended by adding ", within thirty days of the decision or order," **immediately after "may" in the third line.**

(2) Subsection 137(3) of Chapter 1 is amended by striking out "thirty" in the second line and substituting "sixty"**.**

43 Clause 143(f) of Chapter 1 is repealed and the following clause substituted:

(f) any person who has been retained or employed by, and any person who serves on any board or advisory committee or as a Corps member under this Act,

44 Subsection 156(2) of Chapter 1 is amended by

(a) striking out clauses (a) and (b);

(b) striking out clauses (c) and (d) and substituting the following clauses:

(c) assist in the development and implementation of policies and programs to support pollution prevention, environmental management systems, best management practices and the use and commercialization of sustainable environmental innovations, technologies and services;

(d) promote the growth of the environmental sector in local and global markets;

and

(c) striking out clause (j) and substituting the following clause:

(j) promote such other activities as may be necessary to support pollution prevention, environmental management systems, best management practices and environmental industries, innovations and technologies.

45 Section 158 of Chapter 1 is amended by

(a) adding ", an environmental assessment approval, a temporary approval" **immediately after "approval" in the second line of clause (e); and**

(b) adding ", an environmental assessment approval, a temporary approval" **immediately after "approval" in the second line of clause (f).**

46 Subsection 159(3) of Chapter 1 is repealed.

47 Chapter 1 is further amended by adding immediately after Section 159 the following Section:

159A (1) In this Section, "business" means

(a) a person authorized or entitled to carry on a trade, occupation, profession, service or venture with a view to a profit, including a partnership and a limited partnership; or

(b) a corporation.

(2) A business that commits an offence referred to in Section 99 is liable to a fine of not more than one hundred thousand dollars or the fine prescribed in the regulations.

(3) Notwithstanding clause 3(aj), a person, other than a business, who commits an offence referred to in Section 99 is liable to a fine of not more than ten thousand dollars or the fine prescribed in the regulations.

48 Subsection 166(1) of Chapter 1 is amended by adding immediately after clause (h) the following clauses:

(ha) directing the offender to pay to the Minister the costs incurred by the Minister in carrying out the investigation of the offence;

(hb) directing the offender to dispose of the litter in a manner and within the time prescribed by the Minister;

49 Subsection 168(1) of Chapter 1 is amended by striking out "of" the second time it appears in the sixth line.

50 Section 169 of Chapter 1 is repealed and the following Section substituted:

169 All costs, expenses or charges incurred in the carrying out of emergency measures including, without limiting the generality of the foregoing, any management or remediation measures, are recoverable by the Minister or a municipality, either by an action in debt or by a method prescribed in this Act or the regulations, against the person responsible for the need to take the emergency measures.

51 Section 174 of Chapter 1 is repealed and the following Section substituted:

174 The Minister shall appoint an advisory committee to review this Act within five years of the coming into force of this Section and every five years thereafter.

52 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.